

PRAYER

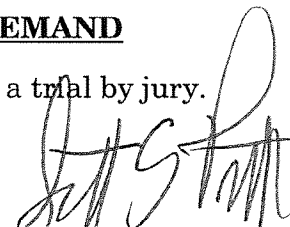
WHEREFORE, Answering Defendants pray for relief as follows:

1. That CIC take nothing by reasons of its Complaint and judgment be rendered in favor of Answering Defendants;
2. That Answering Defendants be awarded their cost of suit incurred herein; and
3. That Answering Defendants be granted such other and further relief as the court deems just and proper.

JURY DEMAND

Answering Defendants demand a trial by jury.

DATED: July 15, 2008



SCOTT T. PRATT
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KEESAL, YOUNG & LOGAN
Attorneys for Defendants
REGAL STONE LIMITED and FLEET
MANAGEMENT, LTD.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Join Necessary Parties)

70. As an Eighth Affirmative Defense, Answering Defendants state and allege that CIC has failed to join Necessary Parties to its action.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

71. As a Ninth Affirmative Defense, Answering Defendants state and allege that CIC's claims against Answering Defendants are barred by the doctrine of unclean hands as a result of, among other conduct, the violation of California Harbors and Navigation Code Section 1198(a) by Cota as a member of The San Francisco Bar Pilots and The San Francisco Bar Pilots Benevolent and Protective Association.

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

72. As a Tenth Affirmative Defense, Answering Defendants state and allege that CIC is estopped from pursuing claims against Answering Defendants as a result of, among other conduct, the violation of California Harbors and Navigation Code Section 1198(a) by Cota as a member of The San Francisco Bar Pilots and The San Francisco Bar Pilots Benevolent and Protective Association.

ELEVENTH AFFIRMATIVE DEFENSE

(In *Pari Delicto*)

73. As an Eleventh Affirmative Defense, Answering Defendants state and allege that CIC's claims against Answering Defendants are barred by the doctrine of *In Pari Delicto* as a result of, among other conduct, the violation of California Harbors and Navigation Code Section 1198(a) by Cota as a member of The San Francisco Bar Pilots and The San Francisco Bar Pilots Benevolent and Protective Association.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 (Section 1198(c)(1)(B) Limitation)

3 66. As a Fourth Affirmative Defense, Answering Defendants state and
4 allege that it is not obligated to indemnify Cota to the extent such indemnity causes the
5 amounts recoverable from *COSCO BUSAN*, its owner, operator or demise or bareboat
6 charterer to exceed the limits of liability to which a Vessel, its owner, operator or demise
7 or bareboat charter are entitled under any bill of lading, charter party, contract of
8 affreightment or provision of law pursuant to California Harbor and Navigation Code
9 section 1198(c)(1)(B).

10
11 **FIFTH AFFIRMATIVE DEFENSE**

12 (CIC is not entitled to Subrogation)

13 67. As a Fifth Affirmative Defense, Answering Defendants state and
14 allege that Cota engaged in culpable and inexcusable neglect, thus barring CIC's right to
15 subrogation. *Lawyers Title Ins. Corp. v. Feldsher*, 42 Cal. App. 4th 41 (1996).

16
17 **SIXTH AFFIRMATIVE DEFENSE**

18 (CIC Acted as a Volunteer)

19 68. As a Sixth Affirmative Defense, Answering Defendants state and
20 allege that CIC acted as a volunteer in paying any amounts for the defense and
21 indemnity of Cota and is therefore precluded from recovery against Vessel Owners.

22
23 **SEVENTH AFFIRMATIVE DEFENSE**

24 (Doctrine of Superior Equities)

25 69. As a Seventh Affirmative Defense, Answering Defendants state and
26 allege that CIC's equities are not superior to those of Answering Defendants and
27 therefore CIC is precluded from recovery against Answering Defendants.

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1 60. In response to the allegations set forth in Paragraph 60 of the
2 Complaint, Answering Defendants deny said allegations.

3 61. In response to the allegations set forth in Paragraph 61 of the
4 Complaint, Answering Defendants deny said allegations.

5 62. In response to the allegations set forth in Paragraph 62 of the
6 Complaint, Answering Defendants deny said allegations.

7
8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 (Failure to State Claim)

11 63. As a First Affirmative Defense, Answering Defendants state and
12 allege that the Complaint, and each purported cause of action set forth therein, fails to
13 state a claim upon which relief can be granted against Answering Defendants.

14
15 **SECOND AFFIRMATIVE DEFENSE**

16 (Preemption)

17 64. As a Second Affirmative Defense, Answering Defendants state and
18 allege that California Harbors and Navigation Code section 1198(c) is invalid as it is
19 preempted by federal maritime law.

20
21 **THIRD AFFIRMATIVE DEFENSE**

22 (Willful Misconduct)

23 65. As a Third Affirmative Defense, Answering Defendants state and
24 allege that Cota's acts and/or the acts of the San Francisco Bar Pilots and the San
25 Francisco Bar Pilots Benevolent and Protective Association (collectively "Bar Pilots") and
26 their officers and employees constituted willful misconduct under section 1198(c)(1)(C)
27 and therefore neither Cota nor Bar Pilots are entitled to a defense or indemnity.

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1 50. In response to the allegations set forth in Paragraph 50 of the
2 Complaint, Answering Defendants incorporate by reference their response to
3 Paragraphs 1 through 49 herein.

4 51. In response to the allegations set forth in Paragraph 51 of the
5 Complaint, Answering Defendants admit said allegations.

6 52. In response to the allegations set forth in Paragraph 52 of the
7 Complaint, Answering Defendants have insufficient information to respond to the
8 allegations contained in said Paragraph and therefore, based upon their lack of
9 information and belief, deny the allegations contained therein.

10 53. In response to the allegations set forth in Paragraph 53 of the
11 Complaint, Answering Defendants have insufficient information to respond to the
12 allegations contained in said Paragraph and therefore, based upon their lack of
13 information and belief, deny the allegations contained therein.

14 54. In response to the allegations set forth in Paragraph 54 of the
15 Complaint, Answering Defendants have insufficient information to respond to the
16 allegations contained in said Paragraph and therefore, based upon their lack of
17 information and belief, deny the allegations contained therein.

18 55. In response to the allegations set forth in Paragraph 55 of the
19 Complaint, Answering Defendants admit said allegations.

20 56. In response to the allegations set forth in Paragraph 56 of the
21 Complaint, Answering Defendants deny said allegations.

22 57. In response to the allegations set forth in Paragraph 57 of the
23 Complaint, Answering Defendants deny said allegations.

24 58. In response to the allegations set forth in Paragraph 58 of the
25 Complaint, Answering Defendants incorporate by reference their response to
26 Paragraphs 1 through 58 of the Complaint herein.

27 59. In response to the allegations set forth in Paragraph 59 of the
28 Complaint, Answering Defendants deny said allegations.

1 43. In response to the allegations set forth in Paragraph 43 of the
2 Complaint, Answering Defendants have insufficient information to respond to the
3 allegations contained in said Paragraph and therefore, based upon their lack of
4 information and belief, deny the allegations contained therein.

5 44. In response to the allegations set forth in Paragraph 44 of the
6 Complaint, Answering Defendants have insufficient information to respond to the
7 allegations contained in said Paragraph and therefore, based upon their lack of
8 information and belief, deny the allegations contained therein.

9 45. In response to the allegations set forth in Paragraph 45 of the
10 Complaint, Answering Defendants incorporate by reference their response to
11 Paragraphs 1 through 44 herein.

12 46. In response to the allegations set forth in Paragraph 46 of the
13 Complaint, Answering Defendants have insufficient information to respond to the
14 allegations contained in said Paragraph and therefore, based upon their lack of
15 information and belief, deny the allegations contained therein.

16 47. In response to the allegations set forth in Paragraph 47 of the
17 Complaint, Answering Defendants have insufficient information to respond to the
18 allegations contained in said Paragraph and therefore, based upon their lack of
19 information and belief, deny the allegations contained therein.

20 48. In response to the allegations set forth in Paragraph 48 of the
21 Complaint, Answering Defendants have insufficient information to respond to the
22 allegations contained in said Paragraph and therefore, based upon their lack of
23 information and belief, deny the allegations contained therein.

24 49. In response to the allegations set forth in Paragraph 49 of the
25 Complaint, Answering Defendants have insufficient information to respond to the
26 allegations contained in said Paragraph and therefore, based upon their lack of
27 information and belief, deny the allegations contained therein.

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1 33. In response to the allegations set forth in Paragraph 33 of the
2 Complaint, Answering Defendants deny said allegations.

3 34. In response to the allegations set forth in Paragraph 34 of the
4 Complaint, Answering Defendants deny said allegations.

5 35. In response to the allegations set forth in Paragraph 35 of the
6 Complaint, Answering Defendants deny said allegations.

7 36. In response to the allegations set forth in Paragraph 36 of the
8 Complaint, Answering Defendants incorporate their responses to Paragraphs 1 through
9 35 herein.

10 37. In response to the allegations set forth in Paragraph 37 of the
11 Complaint, Answering Defendants admit said allegations.

12 38. In response to the allegations set forth in Paragraph 38 of the
13 Complaint, Answering Defendants admit said allegations.

14 39. In response to the allegations set forth in Paragraph 39 of the
15 Complaint, Answering Defendants admit said allegations.

16 40. In response to the allegations set forth in Paragraph 40 of the
17 Complaint, Answering Defendants admit said allegations only to the extent that
18 Exhibit B to the Complaint is as actual true and correct copy of Original Indictment and
19 a true and correct copy of the Superseding Indictment; except as so admitted, Answering
20 Defendants deny the allegations contained in said Paragraph.

21 41. In response to the allegations set forth in Paragraph 41 of the
22 Complaint, Answering Defendants have insufficient information to respond to the
23 allegations contained in said Paragraph and therefore, based upon their lack of
24 information and belief, deny the allegations contained therein.

25 42. In response to the allegations set forth in Paragraph 42 of the
26 Complaint, Answering Defendants have insufficient information to respond to the
27 allegations contained in said Paragraph and therefore, based upon their lack of
28 information and belief, deny the allegations contained therein.

1 23. In response to the allegations set forth in Paragraph 23 of the
2 Complaint, Answering Defendants incorporate by reference their responses to
3 Paragraphs 1 to 22 of the Complaint herein.

4 24. In response to the allegations set forth in Paragraph 24 of the
5 Complaint, Answering Defendants admit said allegations.

6 25. In response to the allegations set forth in Paragraph 25 of the
7 Complaint, Answering Defendants admit said allegations.

8 26. In response to the allegations set forth in Paragraph 26 of the
9 Complaint, Answering Defendants deny said allegations.

10 27. In response to the allegations set forth in Paragraph 27 of the
11 Complaint, Answering Defendants have insufficient information to respond to the
12 allegations contained in said Paragraph and therefore, based upon their lack of
13 information and belief, deny the allegations contained therein.

14 28. In response to the allegations set forth in Paragraph 28 of the
15 Complaint, Answering Defendants have insufficient information to respond to the
16 allegations contained in said Paragraph and therefore, based upon their lack of
17 information and belief, deny the allegations contained therein.

18 29. In response to the allegations set forth in Paragraph 29 of the
19 Complaint, Answering Defendants deny the allegations contained in said Paragraph.

20 30. In response to the allegations set forth in Paragraph 30 of the
21 Complaint, Answering Defendants deny the allegations set forth in said Paragraph.

22 31. In response to the allegations set forth in Paragraph 31 of the
23 Complaint, Answering Defendants have insufficient information to respond to the
24 allegations contained in said Paragraph and therefore, based upon their lack of
25 information and belief, deny the allegations contained therein.

26 32. In response to the allegations set forth in Paragraph 32 of the
27 Complaint, Answering Defendants deny said allegations.

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1 12. In response to the allegations set forth in Paragraph 12 of the
2 Complaint, Answering Defendants admit said allegations only to the extent that
3 Exhibit A is a true and correct copy of the Policy; except as so admitted, Answering
4 Defendants deny the allegations contained therein.

5 13. In response to the allegations set forth in Paragraph 13 of the
6 Complaint, Answering Defendants admit said allegations.

7 14. In response to the allegations set forth in Paragraph 14 of the
8 Complaint, Answering Defendants admit said allegations.

9 15. In response to the allegations set forth in Paragraph 15 of the
10 Complaint, Answering Defendants deny said allegations.

11 16. In response to the allegations set forth in Paragraph 16 of the
12 Complaint, Answering Defendants admit said allegations.

13 17. In response to the allegations set forth in Paragraph 17 of the
14 Complaint, Answering Defendants deny said allegations.

15 18. In response to the allegations set forth in Paragraph 18 of the
16 Complaint, Answering Defendants admit those allegations only to the extent that CIC
17 has accurately quoted California Harbors and Navigation Code Section 1198(c); except
18 as so admitted, Answering Defendants deny the allegations contained therein.

19 19. In response to the allegations set forth in Paragraph 19 of the
20 Complaint, Answering Defendants admit said allegations and affirmatively state that
21 Answering Defendants were never offered trip insurance.

22 20. In response to the allegations set forth in Paragraph 20 of the
23 Complaint, Answering Defendants deny said allegations.

24 21. In response to the allegations set forth in Paragraph 21 of the
25 Complaint, Answering Defendants admit said allegations.

26 22. In response to the allegations set forth in Paragraph 22 of the
27 Complaint, Answering Defendants admit said allegations.

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ANSWER TO FIRST AMENDED COMPLAINT

1. In response to the allegations contained in Paragraph 1 of the Complaint, Answering Defendants admit said allegations.

2. In response to the allegations set forth in Paragraph 2 of the Complaint, Answering Defendants admit said allegations.

3. In response to the allegations contained in Paragraph 3 of the Complaint, Answering Defendants admit said allegations.

4. In response to the allegations contained in Paragraph 4, Answering Defendants deny the allegations contained therein and affirmatively state that Rule 9(h) does not confer jurisdiction.

5. In response to the allegations set forth in Paragraph 5 of the Complaint, Answering Defendants admit said allegations.

6. In response to the allegations set forth in Paragraph 6 of the Complaint, Answering Defendants admit said allegations.

7. In response to the allegations set forth in Paragraph 7 of the Complaint, Answering Defendants have insufficient information to respond to the allegations set forth in said Paragraph and therefore, based upon their lack of information and belief, deny the allegations contained therein.

8. In response to the allegations set forth in Paragraph 8 of the Complaint, Answering Defendants have insufficient information to respond to the allegations contained in said Paragraph and therefore, based upon their lack of information and belief, deny the allegations contained therein.

9. In response to the allegations set forth in Paragraph 9 of the Complaint, Answering Defendants admit said allegations.

10. In response to the allegations set forth in Paragraph 10 of the Complaint, Answering Defendants admit said allegations.

11. In response to the allegations set forth in Paragraph 11 of the Complaint, Answering Defendants admit said allegations.

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

THE CONTINENTAL INSURANCE)	Case No. 3:08-CV-2052-SC
COMPANY,)	
	)	Related to Case No:
Plaintiff,	)	3:07-CV-05926-SC
	)	3:07-CV-06045-SC
vs.	)	3:07-CV-05800-SC
)	
JOHN JOSEPH COTA; REGAL STONE)	
LIMITED; FLEET MANAGEMENT, LTD.,	)	ANSWER AND AFFIRMATIVE
and the M/V COSCO BUSAN, LR/IMO	)	DEFENSES OF DEFENDANTS
Ship. No. 9231743 her engines, apparel,	)	REGAL STONE LIMITED AND FLEET
electronics, tackle, boats, appurtenances,	)	MANAGEMENT, LTD. TO FIRST
etc., <i>in rem</i>	)	AMENDED COMPLAINT OF THE
	)	CONTINENTAL INSURANCE
Defendants.	)	COMPANY
)	
	)	DEMAND FOR JURY TRIAL

Defendants REGAL STONE LIMITED ("Regal Stone") and FLEET
 MANAGEMENT, LTD. ("Fleet") (collectively, "Answering Defendants") answer the First
 Amended Complaint ("Complaint") of Plaintiff THE CONTINENTAL INSURANCE
 COMPANY's ("CIC") as follows:

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